

46 Am. Jur. 2d Judges § 201

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Judges

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IX. Disqualification to Act in Particular Case

D. Waiver and Estoppel

§ 201. Effect of waiver of judge's disqualification on other parties

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A waiver of a judge's disqualification by one party will not affect the right of other parties to insist upon the disqualification,¹ especially where a statute forbids a disqualified judge from sitting in a case without the consent of all parties.² However, under some statutes, one party's waiver, effected by participating in the proceedings³ or by presenting its views in a preliminary contested matter, estops all parties united in interest and pleading together from filing a recusal motion.⁴ Additionally, a subsequently joined party is precluded from substituting a judge, without cause, after the time period for the original parties to substitute has expired.⁵

Waiver by the original parties to an action of a statutory right to disqualify a judge has been held not to be binding on a subsequent intervening party.⁶

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Footnotes

- 1 [Lide v. Fidelity & Deposit Co. of Maryland](#), 179 S.C. 161, 183 S.E. 771 (1936).
- 2 [Georgia Power Co. v. Watts](#), 184 Ga. 135, 190 S.E. 654, 110 A.L.R. 465 (1937).
As to waiver by consent of the parties, see § 206.
- 3 [State ex rel. Carkel, Inc. v. Circuit Court For Lincoln County](#), 141 Wis. 2d 257, 414 N.W.2d 640 (1987).
- 4 [DeWitt Ross & Stevens, S.C. v. Galaxy Gaming and Racing Ltd. Partnership](#), 2003 WI App 190, 267 Wis. 2d 233, 670 N.W.2d 74 (Ct. App. 2003), decision aff'd in part on other grounds, rev'd in part on other grounds, 2004 WI 92, 273 Wis. 2d 577, 682 N.W.2d 839 (2004).
- 5 [Mattson v. Montana Power Co.](#), 2002 MT 113, 309 Mont. 506, 48 P.3d 34 (2002).
As to timeliness of peremptory challenge, see § 171.

6 [City of San Diego v. Andrews](#), 195 Cal. 111, 231 P. 726 (1924).
As to intervening parties, see § 167.

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